tem has its merits, but they are greatly outweighed by its defects, the chief of which is that it "elevates incapacity to the height of a principle." The jury system must go.

Our present penal system is bankrupt. To substitute something really efficient in its place we must adopt "(a) segregation for an indeterminate period, (b) reparation in damages, (c) the choice of defensive means for different classes of delinquents." In other terms, the indeterminate sentence; the exaction of financial reparation by the criminal for harm done. The individualization of punishment. Prisons must be workshops. We must have institutions for the criminally insane. The absurd short sentence must be abandoned.

Even this rather lengthy outline does not enable me to indicate all the contents or describe all the viewpoints of the author. It so happens that I have known and used in my classes this book for many years. I have not always agreed with the author, but I have always found him informing and stimulating. I commend it, therefore, to lawyers and judges as well as others. Is it not significant that of hundreds of writers mentioned by Ferri not one (I believe) is an American? Yet in practical reforms no country, as Ferri says, has done more in reconstructing its penal system and Ferri as leader of the positive school put his approval upon them.

Much credit is due the translators, Joseph J. Kelly and John Lisle, neither of whom lived to see the task completed. The volume is the latest of the series of translations published under the auspices of the American Institute of Criminal Law and Criminology. The work of editing the volume was done by W. W. Smithers, of the Philadelphia Bar.

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THE ARGENTINE CIVIL CODE TOGETHER WITH CONSTITUTION AND LAW OF CIVIL REGISTRY. Translated from the Original Spanish Text, as Officially Promulgated. By Frank L. Joannini. 1 Vol. 8vo. Boston Book Company, 1917.

With the exception of Brazil, whose first civil code became law on January 1, 1916, the states of Latin America, important from an economic and cultural point of view, have produced no codifications of civil law for the past half century. Most Spanish American codifications antedate the present codes of the mother country and have received surprisingly little revision. Of these codes, one of the best as a judicial synthesis, and also one of the earliest is the Chilean Code. The Brazilian Code is as yet too untried and unstudied to hazard more than the merest opinion.

The Argentine Civil Code, chosen as the latest subject of translation by the Comparative Law Bureau of the American Bar Association (Foreign Civil Code Series), has been in force since January 1, 1871. Its importance lies in the greatness of the young republic over which it governs rather than its scientific value, as compared, for example, with the Code of Germany (1900), and the Swiss Civil Code (effective January 1, 1912).

The Argentine Civil Code was the work of a single jurist, Delmacio

Velez Sarsfield, who, after six years, presented his draft to the legislative bodies, which adopted it without discussion. It is a strikingly eclectic code. Lisandro Segovia, in his introduction to his *"Explicación y Critica del Código Civil"* traces the origins of the 4051 articles composing the code to various foreign codes and legal writers in the following proportion: to Freita's Draft of a Civil Code for Brazil (begun in 1859), 1495 articles; to the French Civil Code, 1100 articles; to the Chilean Civil Code, 170 articles; to the Code of Louisiana, 52 articles; to the Uruguayan Code of Acevedo, 27 articles; and to various authors, predominatingly French, 1228 articles. The scarcity of Spanish sources is remarkable, though explainable perhaps by reason of the multiplication and survival of old codes in Spain at that time and also from a not unnatural want of sympathy towards Castilian law on the part of the Republic that had won her independence in the memory of men then living. It is also interesting to note that the more energetic Argentina produced a code based principally on the Brazilian (Portuguese) work of Freita's forty-five years before that author's labors finally brought forth their intended fruit in the form of the Brazilian Civil Code of 1916.

The arrangement of the material of these two codes is markedly different and in the reviewer's opinion the superiority lies in the Brazilian Code, which shows allegiance to the more scientifically constructed Civil Code of Germany. Both have adopted the usual method of incorporating a Preliminary Title on the application of laws in general and the governing principles of conflict of laws. The Argentine Code then divides into four books: I, Persons; II, Rights with respect to persons; III, Rights with respect to things; IV, Rights affecting both persons and things (chiefly rights of succession). The Brazilian Code is divided into a First Part containing general rules, and a Second Part containing particular rules. In the First Part are brought together all the general principles of civil law relating to I, Persons; II, Things; III, Facts (which are productive of juridical alterations in persons and things). In the Second Part have been brought together the special rules governing I, The Family; II, Rights Over Things; III, Obligations (including consensual obligations), and IV, Rights of Succession (*i. e.*, inheritance).

Another point of superiority in the Brazilian Code, if brevity in the statement of the law may be regarded as such, is that the Brazilian Code, while incorporating considerable new matter over the Argentine Code, is complete in 1828 articles as against 4051 in the Argentine legislation. The Swiss Code is still more compact, but it must be remembered that the whole body of the Swiss law of obligations, including contracts, is contained in the separate "Federal Code of Obligations." That there has been a steady advance in method in all the codes that have been mentioned over the Napoleonic Code, the first of the great collections of civil law, there can be no doubt at all.

The translation of the Argentine Civil Code appears in the now well-known and attractive green cloth bindings adopted by the Comparative Law Bureau of the American Bar Association. In a volume containing, as this does, more than seven hundred pages, a lighter paper might have been used, as it would have been more convenient to handle and more durable.

The volume contains a translation of the tables of contents of the official edition of the Code, a short Translator's Note regarding terminology, a valuable "Introduction" (based on the "Introduction" to Machado's Com-

mentaries), by Phanor James Eder, who, with Robert S. Kerr and Joseph Wheless, formed the Revision Committee; translations of the Constitution of the Argentine Nation, and the Civil Code (into which the translator has, we think wrongly, incorporated the later Marriage Law); in an Appendix, the Law of Civil Registry of October 31, 1884; an Act of August 24, 1898, extending the applications of the latter law to the National Territories; and the Law of June 3, 1901, extending the Civil Registry Act to marriages; finally a copious alphabetical index of one hundred pages.

That the translation will be useful to the Anglo-American Bar there can be no doubt. The work was entrusted to one who had had experience in translating legal Spanish, having been engaged by this Government to translate important bodies of law of our Spanish-speaking possessions. The reviewer cannot, however, refrain from expressing his disappointment that the work was not better done.

The translator had to face the old problem of expressing the contents of one system of law in terms of another system. He decided to avoid a search for English equivalents and to take over bodily the terminology of modern Roman law. Against this method of itself we make no criticism beyond the inartistic invention or taking over of such words as "mandate," "benefit of inventory," "prestation," "discussion," "dative," "dolous," "resolutory conditions," "solidary obligations," "onerous contract of life annuity" (there is almost humor in this), "disinherison," "cautioun juratory," and many other terms that might be enumerated.

We think that the translator would have avoided a defect, which strikes directly at the usefulness of the book, had he considered how such a book would be used by the Anglo-American lawyer, unacquainted with the Roman system. A civil code is not read from the first to the last article, but consulted here and there; articles are consulted without relationship to those that precede or succeed. One of the great aims of the translator should be to facilitate orientation and understanding. In two ways the translator has endeavored to do this—first by providing an alphabetical index in which are found the terminology of both the English law and the Roman law; and, secondly, scattered footnotes explanatory of the Roman terminology. But the notes might well have been more frequent and full, and for this work the translator had at hand the very full notes of the official editions of the Code. The common law lawyer would have been greatly aided by a gloss of the terms used, which would have avoided the necessity of constant reference back to the articles where the term was first used and defined.

Moreover we do not at all admit that it is necessary to invent a terminology for words of Roman origin used to describe legal institutions having a broad equivalent in the common law system. Any work on general jurisprudence would have enlightened the translator on the universalities of such categories as "agency," "bailment," "wrong," "lien," "defect." There need not be rendered by "mandate," "commodatum," "offense," "privilege," "vice"; and of course in using the word "mortgage" for "hypothec" the translator has in a most important instance, fallen into the very ambush he aimed to avoid, since the cruder form of the "mortgage," which only gives a pledge by reason of the passage of title of the property is the mark of the English

law differentiating it from the Roman lien, which required neither passage of title nor possession.

The translation of the Constitution is markedly superior to that of the Civil Code. Unfortunately this is the least needed part, for we already had an English version of the Constitution, parallel to the Spanish, in "American Constitutions," by Rodriguez (International Bureau of the American Republics, Government Printing Office, Washington, 1906).

The translation of the Code contains such samples of muddy thinking and bad English as the following definition of actions for the enforcement of rights over things. Article 2790 (2756), "Real actions are the means of enforcing the declaration in court of the existence, plentitude and liberty of real rights, with the accessory effect, if it lie, of indemnity for the damage caused"; or, again, Article 2275 (2241), "The thing delivered by the lender to the borrower must be consumable, or fungible, even though not consumable."

The passage of a subsequent law, November 2, 1888, governing civil marriage, intended to be incorporated into the Code in the place of Articles 159 to 239, inclusive, has resulted in confusion in the proper numeration of the articles of the Code. We think that the translator has only added to it by placing two sets of figures opposite each article. Whatever may have been the legislative intent as to changing the numeration of the articles upon incorporating the law of civil marriage, it was found that the coexistence of an old and new style numeration lead to uncertainty and error in references. In the latest editions (Lajouane, 1914) the original numeration is retained and the Law of Civil Marriage is printed separately as an appendix. In the decisions of the courts, the old numeration alone is referred to, so that in Joannini's translation only the lighter type figures in brackets should that in Joannini's translation only the lighter type figures in brackets should be heeded.

We also find the amendments to Articles 1032 (998), 1035 (1001) and 1037 (1003) have not been incorporated. It would seem that some Argentine text prior to the official text printed in New York had been used, since in Article 555 (521) the translator retains the negative suppressed in the later texts, thus of course reversing the sense of the article.

The task of the translator is surely not an easy one, and, though we have pointed out some weak points, the volume is certainly to be welcomed as one of the best of the Comparative Law Bureau's publications.

Layton B. Register.

"WAIVER" DISTRIBUTED AMONG THE DEPARTMENTS, ELECTION, ESTOPPEL, CONTRACT AND RELEASE. By John S. Ewart. Pp. XX, 304. Cambridge: Harvard University Press; London: Oxford University Press, 1917.

Most of the books which come to the reviewer's desk are works intended for the use of the practical lawyer to assist him in finding the law as written and decided. Occasionally a real law book reaches him, one which makes a distinct contribution to the science and philosophy of jurisprudence.

The book before us confines itself to an examination of the meaning of a technical term most familiar to the profession through daily use in several